Thurston Motor Lines, Inc. *and* Chauffeurs, Teamsters, and Helpers Local Union No. 391, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 11-CA-8842

March 23, 1981

DECISION AND ORDER

On November 28, 1980, Administrative Law Judge Charles M. Williamson issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

[1] The General Counsel has implicitly excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

In sec. III (b), par. 12, of the Administrative Law Judge's Decision, the following sentence appears: "Holscher allegedly replied that he 'did not have in my hands records of J.C's performance.'" The record shows that the Administrative Law Judge meant to state that, according to Ms. Roach, Holscher replied that she did not have Rorie's performance records in her hands. We hereby correct the error.

In fn. 14, last sentence, of his Decision, the Administrative Law Judge inadvertently substituted the name "Roach" for the name "Holscher." The corrected sentence reads as follows: "In view of the lapse of time (7 months) I do not find it surprising that Holscher's memory on this point was vague."

[2] In sec. IV, par. 6, of his Decision, the Administrative Law Judge commented that it was doubtful that Holscher's statement that he was "appalled" to discover that Rorie had been engaged in union activities would have constituted a violation of Sec. 8(a)(1) if it had been made to employees, citing *Wilker Bros. Co., Inc.*, 236 NLRB 1371 (1978). We find it unnecessary to pass upon, and do not pass upon, the Administrative Law Judge's statement and citation.

DECISION

STATEMENT OF THE CASE

CHARLES M. WILLIAMSON, Administrative Law Judge: This case came to hearing before me in Greensboro, North Carolina, on June 30 and July 1, 1980. The complaint was issued on February 15, 1980, pursuant to a charge filed on January 4, 1980, and an amended charge filed on February 14, 1980. The complaint alleged that Thurston Motor Lines, Inc. (hereafter referred to as Respondent), violated Section 8(a)(1) of the Act by (1) interrogating employees concerning their union membership, activities, and desires; (2) interrogating employees concerning the union membership, activities, and desires of fellow employees; (3) threatening employees that selection of the Union as their collective-bargaining representative would result in their having no place to work; and (4) soliciting an employee to speak against the Union to fellow employees. The complaint further alleged that on or about December 17, 1979, Respondent violated Section 8(a)(3) of the Act by the discharge of employee J. C. Rorie. All parties were afforded full opportunity to appear, to introduce evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. The Charging Party and the General Counsel filed post-hearing briefs, both of which have been carefully considered.

Upon the entire record in the case, and from my observation of the witnesses and their demeanor, and having considered the post-hearing briefs, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent, a motor freight carrier with a facility at Greensboro, North Carolina, is, and has been at all times material herein, a corporation licensed to do business in the State of North Carolina, operating under a certificate of convenience and necessity issued by the Interstate Commerce Commission. During the preceding 12 months, which period is representative of all times material herein, Respondent received gross revenues in excess of $50,000 for services performed directly outside the State of North Carolina, and transported materials from the State of North Carolina to points directly outside the State of North Carolina, valued in excess of $50,000. The complaint alleges, Respondent admits, and I find that Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION

Respondent admits, and I find, that the the Charging Party is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Organizing Campaign, Efficiency Measurement System, and Alleged 8(a)(1) Violation*

This case revolves around certain events during an organizing campaign undertaken by the Charging Party at Respondent's Greensboro, North Carolina, terminal. This campaign began about the middle part of August 1979 when an organizer for the Charging Party named Mumford began handbilling Respondent's Greensboro terminal.[1]

[1] There was evidence that the organizing campaign encompassed all of Respondent's trucking terminals. A representation case petition was filed on April 7, 1980, as Case 11-RC-4866.

In June 1979, several months prior to the start of the Charging Party's organizational campaign, Respondent hired one Edward Moss, an industrial engineer. Moss was hired for the specific purpose of conceiving and instituting a control system to measure the productivity of Respondent's employees. The purpose of the system was to derive a measure of wages paid versus trucking revenues generated[2] and supply a method of controlling this ratio. Following his hire, Moss conducted a study by riding with various of Respondent's Greensboro drivers. This survey included all the areas and types of runs covered by the drivers. On the basis of his work, Moss was able to arrive at a figure representing the average time per stop on a driving run. This figure was then used as a standard for computing the efficiency, expressed as a percentage, for each pickup and delivery driver during a working day. Drivers who made quick pickups and deliveries (stops) attained a higher percentage of efficiency. After a preliminary testing, the measurement system was phased into the Greensboro terminal's operations in late September or the first part of October 1979. Counsel for the General Counsel specifically disavowed any claim that the conception and implementation of this system for measuring employee efficiency implied a discriminatory purpose on Respondent's part.

The General Counsel presented two witnesses—Ronald Glenn and J. C. Rorie—to substantiate his allegations of violation of Section 8(a)(1). Glenn testified that in the latter part of August 1979, he was approached by Terminal Manager Jimmy Dolinger. Glenn had just punched in and Dolinger requested that he step into Dolinger's office. Only Glenn and Dolinger were present. Dolinger allegedly began the conversation by saying, "he guessed that I noticed the guys, or Mr. Mumford, at the gate handing out hand bills for the Union." Dolinger then allegedly asked Glenn what he thought about it." Glenn replied that "I didn't think a lot about it because my father and brother and uncle are associated with the Local 391, and that I had seen my father and my brother lose almost everything they had in the strike, and that I was, you know, not for it." Dolinger then allegedly commended Glenn for his attitude and commented further:

> Q. Do you recall anything else being said in that conversation?
>
> A. Well, he asked me if I could talk to some of the guys that were for the union, and convince them, you know, get them over to my way of thinking, that he would appreciate it, and that, you know, the names of the ringleaders and so forth that I could supply him with, you know, he would more than appreciate that, that if the union went in that he would lose his job.
>
> I went on to ask him why. I said "Well, they would need a Terminal Manager anyhow, why would you lose your job"; and he said, "Well, that is the way that it works."

J. C. Rorie testified that toward the end of September 1979, Dolinger left a note on his timecard directing him to report to the office, only he and Dolinger were present. According to Rorie, Dolinger began by observing that Rorie appeared to be "worried about something." Rorie replied, "As far as I know, I wasn't worried about anything." Dolinger then said he had made inquiries to the salesmen "and they had been inquiring, you know about me, and my customers and everything, and everybody said that I seemed to be doing my job" and he said "it seemed like to him that I might be worried about something since the union man had been up there." Rorie again said he "didn't know of anything that was bothering me." The conversation then allegedly continued as follows:

> Q. What happened next, if anything?
>
> A. I believe at that time, he asked me how I felt about the union; as far as I can remember.
>
> Q. What did you tell him.
>
> A. I told him that I hadn't given it a thought.
>
> Q. Do you recall anything else being said?
>
> A. Yes, he wanted to know how the rest of the guys felt about it. I told him I didn't know. I hadn't heard them say.

Dolinger then allegedly commented that Rorie might know if the other men had said anything about the union because he appeared to get along well with the men. Rorie replied that he tried to get along well with everyone. Dolinger allegedly replied that Rorie "wouldn't have to get involved with the Union." Rorie again stated that he "wasn't involved with the Union." Dolinger commented, "that the union would tear the company up . . . if the Union come in and tore the company up, we-all wouldn't have a place to work." In describing how the Union operated, Dolinger allegedly stated:

> A. That the union would only handle five loads of freight going out of state, and the Company, we would operate, you know, interstate freight, deliveries that are picked up on the outside, the "union just wouldn't mess with that type of freight."

Rorie testified that Dolinger then began to discuss his production ratings:

> Then he told me about my production was down some 70 percent, and I didn't know what he meant by "70 percent" because that is the first time that I had ever heard anything of that type, and I asked him what it was; "Am I doing my work every day like doing my deliveries and pickups" and he said "as far as he know, I was" and I asked him, I said: "Well, if I am doing everything that I am told to do, what more can I do. What can I do to improve myself because I don't want to get fired"; and he said that he didn't know that he hadn't fired nobody since he had been there; he said that some of the drivers had quit since he had been there; but he didn't fire them.

[2] There was credible evidence that in the summer of 1979 wage costs at the Greensboro terminal were higher, as measured against total revenues, than those at others of Respondent's terminals. Respondent's basic purpose was to get more freight delivered per dollar of wage cost; i.e., to raise the productivity of its work force.

B. *The Discharge of J. C. Rorie*

Rorie testified that when the handbilling began in August 1979, organizer Mumford appeared at the gate of the terminal about every 2 weeks. On these occasions, Rorie took a leaflet and sometimes engaged Mumford in conversation.[3] On the occassions when Mumford handbilled, Respondent's supervisors also passed through the gate on their way to work.[4] Rorie stated that he saw Dolinger passing through in at least one instance when Rorie spoke with Mumford at the gate, but Dolinger did not stop nor could he have overheard the two of them talking. Rorie and Dolinger basically agree on this portion of their testimony, except that Dolinger denied observing Rorie having anything to do with Mumford.

Rorie was discharged on December 17, 1979, because, as Respondent contended, he experienced difficulties with his production under Respondent's new efficiency measurement system. Respondent presented (Resp. Exhs. 4–7) the history of Rorie's experiences with the efficiency measurement system. Following the conversation with Dolinger on September 27, 1979, which concerned failure to meet the standards, Rorie was interviewed on October 19, November 16, November 23, and November 30, 1979, by Operations Manager William H. Knowles, Jr. In each instance, Rorie's percentage efficiency appears to have been in the seventies, 16 to 20 percentage points below the contemporary terminal average for similar drivers.[5]

The General Counsel presented Joyce Roach, the manager of Added Dimensions, a specialty store located in the Carolina Circle Mall, Greensboro, North Carolina. This store was one regularly served by Rorie. Roach testified that a Thurston delivery was made to her store just prior to Christmas 1979 and, noticing that Rorie was not driving, she questioned the driver concerning his absence. The driver informed her that "J.C. [Rorie] had been fired." Roach then testified that "it was, you know, a shock that J.C. would have been fired at this time, or any time because of his performance." Roach inquired whether there was anyone she could call about Rorie's discharge and was given the name of Franz Holscher, Respondent's president, located in Charlotte, North Carolina. Roach telephoned Holscher immediately thereafter and expressed her dismay over Rorie's discharge. Holscher allegedly replied that he "did not have in my hands records of J.C.'s performance." Roach admitted that that was true. Holscher then allegedly stated that he did have J.C.'s name "with others on a piece of paper as beginning a union, or having something to do with the union." Roach then suggested that the union was the cause of Rorie's discharge. According to her, Holscher replied, "No, it had nothing to do with it." Following the initial conversation with Holscher by about 5 or 10 minutes, Roach received a telephone call from Holscher wherein he verified her identity.

IV. ANALYSIS AND CONCLUSIONS

Respondent's witness Dolinger testified that the conversation with employee Glenn, set forth above, occurred when Glenn approached him one morning seeking to have his starting time moved up to an earlier hour. Dolinger explained that this could not be done for business reasons. Dolinger denied questioning Glenn about the union activity at the terminal and stated that Glenn, raising the subject, voluntarily explained to him the unfortunate experiences members of his family had had with a union. During the course of the conversation, Dolinger suggested that Glenn let other employees know about the experiences of his relatives. Dolinger specifically denied asking the identity of union ringleaders, seeking to learn of the union activities of other employees, or threatening that employee would have no place to work if the Union were successful in its organizing effort.

Dolinger admitted talking to Rorie toward the end of September 1979. He stated that he left word with the dispatcher for Rorie to see him before going out on his run for that day. The conversation took place because of concern about Rorie's difficulty with the new efficiency standards. Dolinger noted that Rorie was "right at the bottom of the list" as regards efficiency. The conversation began with Dolinger asking if Rorie were having any troubles on his trucking run; whether his truck was being misloaded;[6] or whether he was being run all over town instead of his area. Rorie replied that he was having none of these problems except that sometimes his truck "could have been loaded a little better." Dolinger testified that Rorie could give no reason for his low productivity and that the efficiency system was explained to him on this occasion.[7] Dolinger stated that during this conversation, in a further effort to ascertain what factor, if any, could be affecting Rorie's productivity, he asked, "J.C. if that activity was affecting him, if there was somebody harassing him, or giving him a bad time; over that, something that might cause him not to be as productive as he should be." Dolinger explained that other drivers had come to him saying that "there were certain individuals [employees] out in the parking lot of a night when they were going home, threatening to sign cards and mail in with their names on it."[8] It was this verbal harassment to which Dolinger referred in talking with Rorie on September 27.

[3] Mumford did not testify although he made an appearance on behalf of Charging Party on the second day of the hearing. I make no inference from his failure to testify.

[4] Dolinger testified that Mumford gave him union literature on these occasions.

[5] Although it apparently played no role in the decision to discharge, Respondent also presented (Resp. Exhs. 23-24) Rorie's history for December 10, 1979, through December 17, 1979. The efficiency ratings are mostly in the seventies. There is a low of 63 percent on December 17 and a high of 86 percent on December 11. These figures reflect no real improvement in Rorie's performance during his last week of employment.

[6] If freight is loaded in the wrong order on the truck it may be necessary to partially unload the truck at some of the earlier stops on the route. The alternative is to make the stops out of order thus increasing the mileage driven on the run. Both alternatives are disastrous as far as driver efficiency is concerned.

[7] Prior to and while instituting the efficiency system Respondent conducted meetings with its drivers for the purpose of explaining it. These meetings occurred on August 16, 1979, and November 15, 1979. See Resp. Exhs. 1 and 2. Rorie, when questioned on this topic, did not deny being present at the meetings.

[8] Dolinger said there were some eight employees involved. I credit Dolinger in that he received these reports. I make no finding as to the truth of the reports.

Respondent's witness Holscher testified that he received a telephone call from Roach after J.C. Rorie was discharged. He stated that he did not talk to Roach at first desiring to check on the matter with Dolinger in Greensboro. After checking with Dolinger, Holscher called Roach. Holscher's account of the conversation (which he was unable to date) does not differ materially from that of Roach. Holscher readily admitted that copies of union "handouts" distributed at the Greensboro terminal were regularly forwarded to the Charlotte offices of Respondent and that one of these "handouts" had on it the names of Rorie, Whitt, and Myers identified as "the organizers" of the union. In discussing Rorie with Roach, Holscher stated that he referred to this "handout,"[9] telling Roach that Rorie's participation in the union was one of a number of things unknown to him about Rorie's discharge; he testified further:

> . . . and they had not only his name but they had two other names; I think it was Mr. Whitt and Mr. Myers were the names who were on there, and mentioned that they were the organizers, and so, when I called her back the second time, I said, "I am sorry to hear that you think we did him an injustice," I said, "I was also appalled to find out this, that he was out there actively trying to organize our company" because I had the piece of paper in my hand.

As between Dolinger, on the one hand, and Rorie and Glenn on the other, I credit Dolinger. Counsel for the General Counsel argues in the case of Glenn that he should be credited because he was testifying against the interest of his current employer. *Southern Paint & Waterproofing Co., Inc.*, 230 NLRB 429, 431, fn. 11 (1977). However, on demeanor considerations, I find Dolinger the more believable. In addition, I note that Dolinger, at the time he testified, was no longer in the employ of Respondent and, therefore, possessed no motive that would cause him to "tilt" his testimony in Respondent's favor. As regards Rorie, I cannot credit his halting version of the September 27, 1979, interview as against Dolinger's clear and concise testimony. I therefore find that counsel for the General Counsel has not proved by a preponderance of the evidence that Respondent violated Section 8(a)(1) of the Act in the Dolinger conversations with Glenn and Rorie. In the case of Glenn, I specifically find that the conversation began at Glenn's instigation and that the subject of the union was raised by Glenn. Cf. *PPG Industries, Inc., Lexington Plant, Fiber Glass Division*, 251 NLRB 1146 (1981). I find that the conversation with Rorie on September 27, 1979, was directed toward ascertaining what problems, if any, he was having in meeting efficiency standards and that Dolinger's inquiry about verbal harassment by other employees was not directed to the question of Rorie's union activity but to his work performance. I do not find that Dolinger interrogated either Glenn or Rorie concerning their own or others' union activities, or that he asked anyone to give him the names of the "ringleaders." While Dolinger admitted asking Glenn to relate the story of his relatives' troubles to the rest of the employees I do not find that this request, couched in the form "if people came to him with questions and all about it, would he explain it to them" violated Section 8(a)(1) of the Act. Cf. *Marsh Furniture Co.*, 230 NLRB 580 (1977) (employee directed by supervisors to speak against union to union activist).

Respondent hired Moss several months prior to the start of the union's organizing effort for the purpose of increasing the efficiency of its terminal operation. Respondent measured this efficiency by taking wages paid as a percentage of shipping revenue. Respondent's witness Holscher testified that prior to the introduction of Moss's system the Greensboro terminal's wages paid were running about 17 or 17.5 percent of revenues. The overall average for all of Respondent's terminals was 13.5 percent. Following the introduction of Moss's system, the Greensboro terminal went down to 14.73 percent, a distinct improvement. Counsel for the General Counsel does not contend, and I do not find, that the introduction of the efficiency measurement system was for a discriminatory purpose. I find, instead, that the measurement system was instituted for the business related purpose of increasing driver efficiency and improving it to the end that the productivity of the work force would increase. There remains for decision the question of whether the measurement system was employed in a discriminatory fashion so that Respondent might rid itself of union adherent Rorie. Granted, *arguendo*, that Respondent's managers, Dolinger and Holscher, were aware of Rorie's union adherence,[10] I cannot find that that fact motivated Rorie's discharge. From the start, Rorie proved unable consistently to bring his productivity percentage up to the terminal average. He was counseled by Dolinger on September 27, 1979,[11] and warned by Knowles on three later occasions that fall and early winter.[12] Lengthy and exhaustive cross-examination of Respondent's managers failed to reveal any gross errors in the application of the measurement system to Rorie's work performance. Rorie was unable, while working, to give any satisfactory explanation of why his efficiency

[9] The "handout" was never identified or placed in evidence. In view of the facts that Rorie did not identify himself as an "organizer" of the union (nor did any other witness) and that neither Whitt nor Myers was so identified, I find difficulty in determining that a union "handout" so identified them. The original charge in this case has all three names set out on it. In view of the total inability of either Holscher or Roach to give any date for their conversations except "around Christmas," it is possible that the document alluded to by Holscher is, in fact, the charge dated January 4, 1980. This determination is not, however, essential to my construction of this case.

[10] Dolinger testified he took union leaflets from Mumford at the gate and forwarded them to the Charlotte location on a routine basis. If any of these "handouts" mentioned Rorie's name, as Holscher testified, both he and Dolinger must be presumed to know that fact and thus be aware of Rorie's support for the union.

[11] Dolinger candidly admitted his regret that Rorie could not improve his productivity on a steady basis. Dolinger indicated that Rorie was a willing and friendly employee. My own observation of Rorie while he testified confirmed Dolinger's observations. However, in my opinion, Rorie never really understood the new system whereby his work performance was being measured.

[12] Counsel for the General Counsel puts emphasis on the fact that Dolinger never counseled with Rorie after September. I cannot find anything of a discriminatory nature in this fact. Knowles was operations manager, a position where driver efficiency would constitute one of his main concerns. Knowles warned other drivers.

percentage lagged far behind that of other drivers. He gave no explanation at the hearing. Counsel for the General Counsel suggested that Rorie's truck was old, but there was credible evidence that, on occasion, when other drivers temporarily replaced Rorie, they succeeded in meeting the efficiency standards. Additionally, no specific instances were adduced to show that the age of Rorie's truck, as such, resulted in any significant breakdown time for which Rorie would have been compensated under Respondent's system. Counsel for the General Counsel also suggested that Rorie performed time-consuming services for Respondent's customers in an attempt to hold old business or obtain new. There was some evidence that Respondent desired its drivers to maintain good customer relations and obtain additional business and, it is suggested, Rorie was following Respondent's policies in an attempt to do this. One problem with this suggestion is that it fails to show why Rorie's performance should have been so much lower than the average of his fellow drivers with no evidence that he obtained additional business. Another, and more basic problem, is that Respondent's (nondiscriminatory) business judgment dictated its driver requirements, e.g., deliveries and pickups took precedence over other considerations. Finally, I note that Respondent maintained a force of salesmen charged with the basic responsibility of obtaining revenue-generating business.

Counsel for the General Counsel placed great weight on the testimony of Roach. Her testimony, however, showed no admission by Respondent of discriminatory discharge. Indeed, she testified that Holscher specifically denied discharging Rorie because of union-related considerations when she made that suggestion. The most that can be gleaned from Roach's and Holscher's accounts of their conversation is that (1) at the time of the conversation—sometime after Rorie's discharge—Holscher was aware of Rorie's union adherence and (2) that Holscher said he was "appalled" to find out that Rorie was involved in an organizing campaign. That Holscher was "appalled" may reflect union animus[13] there is no doubt that Respondent did not wish to be organized—but it is doubtful that this statement if made to employees would have constituted a violation of Section 8(a)(1). See *Wilker Bros. Co., Inc.*, 236 NLRB 1371 (1978) (supervisors who expressed "shock and surprise" to employees at union activity held not in violation). This ambiguous remark will not support the superstructure of inference counsel for the General Counsel wishes to build. The decision to discharge Rorie was made and executed at the Greensboro terminal by Dolinger. There is no evidence that Holscher knew of the discharge, much less directed it, prior to the discharge.[14]

Finally, I find no evidence of discriminatory intent in the timing of the discharge. Rorie had been warned on November 16, November 23, and November 30— 3 successive weeks. Dolinger credibly testified that he reviewed Rorie's performance figures up to December 7 or December 14 prior to discharging him and found them "consistently low." The record so reflects. Other drivers (Whitt and Myers) were discharged around the same time.[15] I find that Rorie was not discharged in violation of Section 8(a)(1) and (3) but was, in fact, discharged for cause, *viz*, his consistent failure to achieve a reasonable productivity level.

CONCLUSIONS OF LAW[16]

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent has not engaged in the unfair labor practices alleged in the complaint.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[17]

The complaint is dismissed in its entirety.

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[13] The statement might also reflect unhappiness on Holscher's part that Respondent had discharged a union adherent and might be facing an unfair labor practice case. This speculation is not, however, germane to my view of the case, although it is an interesting one if, as previously surmised, the document Holscher was viewing during the telephone conversation was the January 4, 1980, charge.

[14] Barbara Glenn, wife of Ronald Glenn, and J. C. Rorie both testified on rebuttal that they called Holscher after Rorie's discharge. Neither testified that Holscher appeared to be aware of the discharge. I have taken into account in evaluating Holscher's testimony that both these calls probably antedated Roach's call and that Holscher indicated he learned of Rorie's discharge from Roach. In view of the lapse of time (7 months) I do not find it surprising that Roach's memory on this point was vague.

[15] Whitt and Myers were both alleged as discriminatory discharges in the original charge in this case. The charge was amended on February 14, 1981, to delete their names. Respondent presented their work records. These records are as poor as Rorie's.

[16] The Charging Party contended in its brief that the Board has previously found this Respondent guilty of unfair labor practices. I take judicial notice of that fact, but the "fact that there has been a history of unlawful hostility to unionization does not serve alone as a substitute for proof that the action taken in the present instance was discriminatorily motivated, nor does it serve to shift the burden to the Respondent to establish its innocence." *J. P. Stevens & Co., Inc.*, 181 NLRB 666, 667 (1970).

[17] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.